Heads and Threads Company, a Division of MSL Industries, Inc. *and* Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 29-CA-8396 and 29-CA-8442

May 10, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On November 30, 1981, Administrative Law Judge Steven Davis issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified herein.[2]

In its exceptions, Respondent contends that the Administrative Law Judge's imposition of a *Gissel* bargaining order[3] is unwarranted because, *inter alia*, the record contains no evidence that it had knowledge of its employees' union activity, and no statements were made by its supervisor which would suggest the propriety of a bargaining order or a finding of a violation of the Act. We find these contentions to be completely meritless.

In adopting the Administrative Law Judge's finding that a bargaining order is necessary, we conclude that Respondent's unfair labor practices were indeed sufficiently serious and pervasive in character as to preclude the holding of a fair election. When analyzing unfair labor practices in connection with determining the appropriateness of a *Gissel* bargaining order, we look to the seriousness and scope of the unlawful conduct in the context of the circumstances in the shop when the conduct occurred. In this case, immediately after gaining direct knowledge of its employees' union activity on September 10, 1980,[4] by way of the Union's demand for recognition and bargaining, Respondent began its program of unlawful activity, including the unlawful discharge of employee William Gross on September 11; the September 12 threat to kill Gross and the unlawful offer of a promotion to employee Willie Ravenell conditioned on Ravenell's abandoning his support for the Union; the unlawful changes in the working conditions of Ravenell and Horace Ross and the threats to discharge Ravenell, Lamar Johnson, and Ross on September 15; and the September 15 threat of loss of benefits made to Ravenell by Gregory Svida, Respondent's supervisor. On September 16, during the unfair labor practice strike, Respondent's vice president, Alvin Zee, made an unlawful threat of reprisal against Ravenell by stating the "union idea is going to get you in a lot of trouble because they don't mean you no good." In addition, soon after the start of the strike, Respondent threatened to permanently replace unfair labor practice strikers and unlawfully refused to reinstate seven strikers following the unconditional offer to return to work made by the Union on November 10 on behalf of all the strikers.

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[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In its exceptions, Respondent contends, *inter alia*, that the Administrative Law Judge was biased and prejudiced against Respondent, and disregarded or rejected critical facts, resulting in an unbalanced view of the case. In support of these allegations, Respondent argues that the Administrative Law Judge's former service with the Board as counsel to the General Counsel has in some way interfered with his ability to evaluate evidence impartially and render fair decisions. We find no merit in these contentions. The record contains no statements or other evidence indicating bias or prejudice against Respondent on the Administrative Law Judge's part, and, accordingly, there is no basis for finding same.

In the absence of exceptions we adopt, *pro forma*, the Administrative Law Judge's finding that striking employee Julius King engaged in strike misconduct of such serious character as to render him unfit for future service with Respondent. Accordingly, we also adopt, *pro forma*, the Administrative Law Judge's finding that Respondent did not violate the Act by refusing to reinstate King.

The Administrative Law Judge found that Supervisor Richardson's statement to employee Ravenell, "Hey man, you're trying to get a union in here," violated Sec. 8(a)(1) of the Act because the statement created the impression in its employees' minds that Respondent had a source of information about the employees' union activity. We agree with Respondent that the statement does not constitute the creation of the impression of surveillance. However, when coupled with Richardson's further statement, in the same conversation, "you know what happened when you all tried to get a union in here before, what happened to them guys," it is clear that Richardson's total statement was nothing less than a threat to discharge. Accordingly, we find that Richardson's remarks were a not-so-veiled threat of discharge and that this statement constituted a violation of Sec. 8(a)(1) of the Act.

[2] In his exceptions, the General Counsel, citing *John Cuneo, Inc.*, 253 NLRB 1025 (1981), contends that the Administrative Law Judge erred in failing to include in his recommended Order language in conformance with his findings and conclusions providing in substance that Respondent shall (a) cease and desist from failing to recall and reinstate unfair labor practice strikers, and (b) immediately rescind its newly adopted work assignments and work rules. We find merit in the General Counsel's exceptions and, in accordance with established Board precedent, we have modified the Administrative Law Judge's recommended Order.

Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

[3] *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

[4] All dates herein refer to the year 1980.

Employee Gross' discharge for union activity following on the heels of the Union's demand for recognition and bargaining was a clear message to the unit employees that they would suffer as a result of their union activity. The seriousness of such unlawful action is heightened when the unit, as in the present case, consists of a small number of employees, thereby permitting word of the unlawful discharge to circulate quickly. Even though Gross was reinstated later during the day of his discharge, the impact of the rapid discharge on all the unit employees remains long after such a reinstatement. Moreover, Respondent's upper management was directly involved in Respondent's unfair labor practices, thereby enhancing the effects of the threats to discharge, changes in working conditions, and threats of reprisals for engaging in union activity.

Therefore, in addition to the reasons set forth by the Administrative Law Judge, we note that the particular circumstances of this case preclude the holding of a fair election and call for the imposition of a *Gissel* bargaining order.

We agree with the Administrative Law Judge's inclusion of a "broad" order as part of his recommended remedy herein, and note that the nature and extent of Respondent's violations fully support the imposition of such an order. In *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), we stated, *inter alia*, that a broad order would be warranted when it is shown that a respondent "has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." The unfair labor practices committed by Respondent are of the type the Board contemplated when it set forth the standards for determining when to impose broad injunctive relief. Respondent's conduct was not isolated or a minor transgression, but represented a pattern of egregious conduct affecting all unit employees and designed to thwart the employees' desire for union representation.

AMENDED CONCLUSIONS OF LAW

We hereby affirm the Administrative Law Judge's Conclusions of Law, as modified below:

Substitute the following for Conclusion of Law 7:

"7. By telling an employee that the 'union idea is going to get you in a lot of trouble'; threatening to discharge employees because of their union activities; threatening bodily injury against an employee because of his union activity; threatening an employee with loss of economic benefits if he did not abandon his membership in and activity on behalf of the Union; threatening unfair labor practice strikers with being permanently replaced; and promising promotions and transfers to employees to induce them to refrain from becoming or remaining members of the Union and to induce them to abandon their membership in and activity on its behalf, Respondent has violated Section 8(a)(1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Heads and Threads Company, a Division of MSL Industries, Inc., Woodside, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(c):

"(c) Failing to recall and reinstate unfair labor practice strikers following an unconditional offer to return to work to their same or substantially equivalent positions, discharging if necessary any persons hired permanently to replace them."

2. Insert the following as paragraph 2(b) and reletter the remaining paragraphs accordingly:

"(b) Immediately rescind its newly adopted work assignments and work rules reducing the coffee-break time, and requiring employees to pull orders, to begin work immediately upon punching in, and to notify their supervisors when they intend to use the bathroom."

3. Substitute the following for paragraph 2(e):

"(e) Post at its place of business in Woodside, New York, copies of the attached notice marked 'Appendix.'[80] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties were represented and afforded the opportunity to present evidence in support of their respective positions, it has been found that we have violated the National Labor Relations Act, as amended, in certain respects, and we have been ordered to post this notice and to carry out its terms.

WE WILL NOT discharge our employees because of their union activities.

WE WILL NOT impose changes in work assignments or work rules because of the union activities of our employees by reducing the coffeebreak time or by requiring our employees to pull orders, to begin work immediately upon punching in, or to notify their supervisors when they intend to use the bathroom.

WE WILL NOT imply in statements to our employees that other employees had been fired for engaging in union activities.

WE WILL NOT tell employees that the "union idea is going to get you in a lot of trouble."

WE WILL NOT threaten to discharge our employees because of their union activities.

WE WILL NOT threaten bodily injury against our employees because of their union activity.

WE WILL NOT threaten our employees with loss of economic benefits if they did not abandon their membership in and activity on behalf of the Union.

WE WILL NOT threaten unfair labor practice strikers with being permanently replaced.

WE WILL NOT promise promotions and transfers to our employees to induce them to refrain from becoming or remaining members of the Union or to induce them to abandon their membership in the Union and activity on its behalf.

WE WILL NOT fail or refuse to reinstate unfair labor practice strikers following an unconditional offer to return to work to their same or substantially equivalent positions, discharging if necessary any persons/hired to permanently replace them.

WE WILL NOT refuse to recognize and bargain with the Union concerning the terms and conditions of employment of the employees in the following appropriate bargaining unit:

All warehouse employees and drivers employed by us at our Woodside, New York, warehouse, exclusive of all other employees, guards, and all supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL offer all those employees who participated in the strike which began on September 15, 1980, except Julius King and those who have already been reinstated, immediate and full reinstatement to their former positions of employment or, if those positions are no longer available, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, dismissing, if necessary, any persons hired as replacements on or after September 15, 1980; and WE WILL make whole all unfair labor practice strikers, except Julius King, for any loss of earnings they may have suffered by reason of our refusal to reinstate them, plus interest.

WE WILL immediately rescind our newly adopted work assignments and work rules reducing coffeebreak time and requiring employees to pull orders, to begin work immediately upon punching in, and to notify their supervisors when they intend to use the bathroom.

WE WILL recognize and, upon request, bargain collectively with Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of the employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed written agreement.

HEADS AND THREADS COMPANY, A DIVISION OF MSL INDUSTRIES, INC.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge: This case was heard before me[1] at Brooklyn, New York, on August 17 and 19, 1981.

On October 21, 1980,[2] Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, filed a charge in Case 29-CA-8396, on which basis a complaint was issued on November 21, alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. Specifically, the complaint alleges that Heads and Threads Company, a Division of MSL Industries, Inc., herein called Respondent, violated Section 8(a)(1) and (3) of the Act by subjecting its employees to closer supervision and more onerous conditions of work than they previously had received and by discharging William Gross because of his union activities.[3] Further, the complaint alleges that Respondent violated Section 8(a)(1) of the Act by interrogating its employees concerning their union membership, activities, and sympathies; keeping under surveillance and creating the impression of surveillance of the concerted activities of its employees; threatening its employees with discharge, bodily injury, and denial of promotions and other unspecified reprisals if they became or remained members of the Union; and offering and promising its employees wage increases, promotions to better positions of employment, and transfers to its other locations in order to induce them to refrain from becoming or remaining members of the Union and to refrain from giving any assistance or support to it, and to induce them to abandon their membership in the Union and activity on its behalf.

On November 10, the Union filed a charge in Case 29-CA-8442, on which basis a complaint was issued on December 31 alleging violations of Section 8(a)(1), (3), and (5) of the Act. Specifically, that complaint alleges that Respondent violated Section 8(a)(1), (3), and (5) of the Act by threatening its employees with discharge if they continued to engage in a strike; discharging Joseph Russo; refusing to reinstate seven named employees upon their unconditional offers to return to work because they participated in a strike and because of their union activities; and refusing to bargain with the Union.

On January 28, 1981, an order consolidating cases was issued.

A brief was filed by Respondent, and has been duly considered. Based upon the entire record, the brief, and my observation of the demeanor of the witnesses, I make the following:

[1] The hearing opened before Administrative Law Judge Benjamin Schlesinger. Before any witness testified I was substituted as Administrative Law Judge. Such substitution was agreed to by all parties.

[2] All dates are in 1980 unless otherwise stated.

[3] The complaint also alleges that Gross was reinstated to his former position of employment on the same day that he was discharged.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation having its principal place of business in Northbrook, Illinois, and a warehouse and place of business at 24-25 Brooklyn-Queens Expressway West in Woodside, Queens, New York, herein called the warehouse, is engaged in the business of the importation and wholesale distribution of metal fasteners and related products. It annually purchases and receives goods valued in excess of $50,000 directly from suppliers located outside New York State. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*[4]

1. Background

Employee Willie Ravenell testified that, in or about June or July,[5] employees Frank Friday and Joe[6] asked him why he never attempted to obtain union representation. Ravenell replied that attempts were made in the past[7] but that "all the guys were fired." Ravenell stated that Friday and Joe were also discharged in or about June 1980,[8] and that, shortly thereafter, Supervisor[9] Roosevelt Richardson told him: "You see what happens with Union guys, they try and start trouble with the union now."

Employee Lamar Johnson testified that in or about May he began to speak with his fellow employees about union representation. Although the employees expressed no interest at that time, apparently within a month certain employees became interested in such representation. Accordingly, in June, Johnson was given authorization cards by Union Representative Al Bedell. Johnson distributed the cards to employees in Respondent's parking lot at lunchtime and the cards were returned to Johnson in Respondent's locker room. Johnson kept the cards in

[4] I credit the testimony of employee witnesses Gross, Johnson, Ravenell, and Russo. Their testimony was consistent and mutually corroborative as to events involving all of them. As to incidents involving them individually, they testified without contradiction, Respondent not having called Supervisor Richardson or Vice President Zee. Although Richardson was discharged before the hearing, Respondent states in its brief that his testimony was available to it. The failure of Respondent to call Richardson and Zee permits me to draw an inference that their testimony would have been adverse to Respondent had they testified. *Le Roy Fantasies, Inc., and Hardwicke's Plum, Inc., a Joint Venture, d/b/a Maxwell's Plum*, 256 NLRB 211 (1981).

[5] June appears to be the correct month inasmuch as the events which occurred later, specifically employee Lamar Johnson's activities on behalf of the Union, clearly took place in late June.

[6] Ravenell could provide no last name for Joe.

[7] Ravenell had been employed by Respondent at various times in the past 10 years.

[8] There is no allegation in the complaints that those alleged discharges were unlawful. No evidence was presented as to their alleged discharges nor even whether they were actually employed by Respondent.

[9] Respondent's answer admits that Richardson is was supervisor within the meaning of Sec. 2(11) of the Act.

his locker.[10] Seven authorization cards were received in evidence, dated June 25 and 26, signed by Johnson, William Ross, Horace Ross, William Gross, Lawrence Creighton, Curtis Exum, and Julius King.[11]

Ravenell testified that in or about late August he was working at his machine when Richardson approached him and said: "Hey man, you're trying to get a union in here. You know what happened when you all tried to get a union in here before, what happened to them guys." Ravenell replied with an obscenity and continued working. Richardson did not testify.

2. The union meeting of September 9 and the alleged surveillance

On September 9, a meeting was arranged at the union office for certain employees of Respondent. Ravenell testified that, during that day, employee Johnson reminded employees of their meeting that evening so that those working on the early shift would wait for the others who worked a later shift. The employees left the premises together at 6 p.m. Ravenell stated that Richardson asked them, "Whatcha all guys up to?" Ravenell replied by cursing at Richardson. Ravenell and employee William Gross testified that two cars were driven to the union office at that time, and that Richardson followed the cars despite the fact that he (Richardson) usually traveled home in the opposite direction. Gross added that Richardson followed behind them in a car for one-quarter mile and then turned off. The employees' cars traveled for another 40 minutes to the union office without being followed.

The following employees were present at the union office that night: Lawrence Creighton, Philip Curran, Curtis Exum, William Gross, Julius King, Lamar Johnson, Willie Ravenell, and Horace Ross. At the meeting, the employees spoke about harassment at work and about the poor benefits offered by Respondent. The main reason for the employees seeking representation was because of harassment by Supervisor Richardson. All eight employees signed application cards for membership in the Union at that time.

3. The demand for recognition

The following day, September 10, Union Representatives James Martinez and Julius Zaretsky visited Respondent's premises. Zaretsky spoke to Gregory Svida, Respondent's supervisor.[12] Zaretsky advised Svida that the Union represented a majority of Respondent's employees and that they wanted to negotiate a contract. Svida said that he had no authority to speak with them and had to contact his superiors. It was agreed that Svida would call the Union by Monday morning, September 14. It should be noted that Respondent's answer admits that the Union demanded recognition.

4. The discharge of William Gross and the strike of September 11

Gross was hired on January 4, 1979, as an order puller and transfer puller. He was one of the employees who signed an authorization card given to him by Johnson in late June in Respondent's parking lot; he also signed a card at the union meeting on September 9.

Gross testified that on September 11 he was working as usual pulling bills prior to 8 a.m. Supervisor Richardson approached him and asked how much work he had done. Gross showed him the skids on the floor apparently upon which were the materials pulled. Richardson stated that Gross did not do enough work, adding that he could have worked faster. Gross protested, saying that half of the material was not in its appropriate place, thereby making it more time consuming to pull the orders. Richardson then called Gross a liar, adding that Gross could have pulled more orders. Gross then said: "Kiss my ass." Richardson replied that he would punch Gross' timecard, which he then did. Richardson then pointed his finger at Gross, telling him that he (Gross) was "not going to get the union and it's not going to work," and that he should not have brought the Union there in the first place. Richardson told Gross that he was fired and Gross then left. Other employees were outside the shop taking their breaks at that time. Gross told them what had occurred and suggested that they follow the Union's advice, previously given, that if one employee was discharged all employees should strike. The employees stayed outside for about 2 hours. Employees called the Union, and apparently there were conversations between union representatives[13] and Respondent's supervisors, which resulted in the reinstatement of Gross and all employees returning to work without loss of pay.[14]

Ravenell testified that that day he was working as a stockman putting up stock. Richardson approached him and "insisted" that if Ravenell wanted to retain his job he must pull orders as well as put up stock. Richardson stated: "The union can't help you now because you ain't in the union. I'll fire you right now and send you home." In the past, Richardson had never commented on Ravenell's work.

5. The events of September 12

Gross testified that the following day, September 12, Richardson walked around the shop holding a crowbar, saying that he would "hurt someone," and asking him questions about his work. Employee Johnson testified that Richardson said: "Damn Bill, if I get my hands on him I'm going to kill him," while at the same time

[10] There was a slight inconsistency in Johnson's testimony which I do not regard as material or in any way affecting his testimony which I credit. Johnson testified initially that he did not see anyone fill out his card and later testified that he saw three to four employees sign their cards. Ravenell testified that he saw all the employees sign their cards.

[11] The General Counsel does not allege that these cards should be used to support his request for a bargaining order.

[12] Respondent's answer admits that Svida is a supervisor within the meaning of Sec. 2(11) of the Act.

[13] Gross testified that, although Svida told the employees that they could return to work, he refused until the Union approved their return to work.

[14] Gross also testified that, while he was outside the shop with the other employees, Supervisor Svida told him that he was not discharged, but rather was merely told to punch out.

smacking a crowbar in his (Richardson's) hands. Johnson did not hear Richardson say why he was angry at Gross.

Union official Martinez visited Respondent's premises that day and met with 10 or 11 employees who were outside the shop taking their coffeebreak. His purpose in meeting with the men was to advise them not to antagonize Respondent and to try and stay calm. They complained about Richardson and mentioned that they would strike. Martinez spoke to Supervisor Richardson, telling him that the employees had a right to join the Union, and that he should let "management" deal with the Union and not take it upon himself to do so.

Employee Ravenell testified that he left work early that day but returned later, at or about 6:30 p.m., to pick up some of his friends, and waited in Respondent's parking lot with a "bottle," which apparently contained liquor. Richardson approached Ravenell and at first refused to drink with "you union guys" because he (Richardson) was a "company man." They both laughed about this statement but then they began drinking together. Richardson told Ravenell that he "shouldn't be with the Union" because he intended to promote him to assistant foreman, adding, "You can't vote for the union . . . . You'd be a company man." Richardson added that he would give Ravenell the shop's burglar alarm key on Monday, September 15, so that he (Ravenell) could lock the premises each day. Ravenell also testified that about a month before, in August, Richardson complained about his 12-hour workday and he told Ravenell that he wanted him to become his assistant, and mentioned that he would receive a 25-cent raise. Ravenell stated that he knew the offer of the raise was a lie and in any event he was not promoted at that time because of the hire of Bob.[15] Ravenell never received the key to the warehouse.

6. The events of September 15 and the strike

Employee Ravenell testified that he punched in 15 minutes early, at 7:45 a.m. Richardson told him that he must start work whenever he punches in, even if it is before his regular starting time. Ravenell refused, saying that inasmuch as he was not paid from 7:45 a.m. he would not begin work until 8 a.m. Richardson then told Ravenell that he could return home if he so wanted. Richardson had never previously told him of this requirement for starting work when punching in.

At the first coffeebreak, Richardson told Ravenell that he could only take a 5-minute coffeebreak, whereas the coffeebreak had always been 10 minutes.

Employee Lamar Johnson testified that as he was unloading a truck he was asked by Richardson why he was working so slow. Johnson explained that he was backing up the hilo. Richardson replied that if he did not "speed it up" he would be discharged. Johnson never had been so warned in the past by Richardson. Johnson also reported that he heard Richardson tell employee Horace Ross on or about that day that he spent too much time in the bathroom, instructing him that he must advise Richardson when he wished to use the bathroom and, if he did not, he could punch his card and go home. Johnson stated that he had never previously heard Richardson complain about employees staying in the bathroom too long.

Union official Zaretsky testified that Respondent's supervisor, Svida, had agreed on September 10 to call the Union by September 15 with a response to the Union's demand for bargaining. When Zaretsky had not heard from Svida he called him and asked if he had heard from Respondent's parent company. Svida told Zaretsky that the Union could go to the Board.

That afternoon, Zaretsky visited Respondent's premises with union official Martinez. They met with the employees and told them that Respondent would not recognize the Union. Martinez told them that the next step would be to go to the Board, a process taking about 6 to 10 weeks. Certain employees stated that they were being harassed and replied that they would not take the "B.S." any more and would "walk out." Martinez explained that he was told by employees that the foreman carried a pipe and a gun and threatened to hit and shoot them. Zaretsky told them that the decision to strike was up to them. The employees replied that they were being harassed and wanted to strike. Ravenell stated that just prior to the strike he was called into Supervisor Svida's office. Svida told him: "You got a whole lot to lose messing around with the Union cause you've got a lot of time in, your seniority, your profit sharing, plus your hospitalization." Ravenell replied that he did not care what he had to lose because of the harassment of Richardson and that he would strike because of such harassment.

Ravenell stated that at or about the time that day that the employees became aware that Respondent would not recognize the Union, Richardson "hassled" and harassed the employees by saying: "See there, I told you." The employees then decided to leave in order to "just go and see if we can do a little better than this." Ravenell's reason for striking was Richardson's harassment, his pushing employees to do unnecessary work, and his threats.

All the unit employees except driver W. Ferrell went out on strike.

7. The events subsequent to September 15

Ravenell testified that he went to Respondent's office on or about September 16 to inquire about his profit-sharing money and vacation pay and spoke to Alvin Zee, Respondent's vice president.[16] Zee told Ravenell that the "union idea is going to get you in a lot of trouble because they don't mean you no good and nobody else." Zee also told Ravenell that he would be placed on a preferential hiring list. Zee further said that he was opening a new warehouse in Florida and he wanted Ravenell to "set up the warehouse and leave the Union." Ravenell said that he needed a job and wanted to return to work, and would do so if he received a signed statement that he would never be discharged. Ravenell gave Zee his home telephone number and thereafter Zee phoned him twice. The first call was to advise that the date for departure to Florida was not yet known. The second call

[15] Ravenell did not provide the last name of Bob.

[16] Respondent's answer admits Zee's status as vice president.

was to advise that arrangements were nearly complete and that Ravenell should have his airline ticket shortly. There is no evidence as to whether a warehouse was opened in Florida or whether Ravenell traveled there to set it up. Zee did not testify.

The strike and picketing continued until about November 9. On that day a meeting was held at the union office. Present were several of the striking employees. Union officials told the employees that the picketing must stop because an injunction had been obtained against it.[17]

8. The unconditional offer to return to work

On November 10, the Union's secretary treasurer, Joseph Konowe, sent a telegram to Respondent, which stated:

> On behalf of each and every striking employee, we hereby make an unconditional offer on their behalf to return to work immediately.
>
> Please contact the undersigned or the individuals directly to arrange for their return to work immediately.

Respondent contends that the Union's offer that employees return to work was invalid and ineffective because (1) the employees were not members of the Union, (2) the Union was not authorized or asked by the employees to offer their return to work, and (3) the telegram did not identify the employees.

I reject these arguments. The employees signed cards for the Union through which the employees authorized it to represent them for purposes of collective bargaining. Moreover, the Union acted as the employees' representative and was consulted by them. When on September 11 Gross was discharged and the employees stopped work, apparently there were discussions between the Union, employees, and Respondent which resulted in the reinstatement of Gross and the return to work of the employees. Further, the employees regarded the Union as their representative. Gross testified that employees discussed returning to work among themselves and agreed that the Union could offer their return. The individual strikers need not be named in the Union's offer.[18]

9. The discharges

a. *Joseph Russo*

The complaint alleges that, on or about September 22, Respondent unlawfully discharged Joseph Russo because he participated in the strike and because he joined and assisted the Union and engaged in other concerted activities. Respondent denies discharging Russo.

Russo went out on strike with the other employees on September 15 and struck for about a week. He phoned Svida on September 21 and told him that he wanted to return to work for economic reasons, but that he was fearful of doing so because he did not want the pickets to see him. Svida offered to have a security guard in a van pick Russo up at home and drive him to the plant. Russo agreed. The next day, a van arrived at Russo's home to pick him up, but Russo did not avail himself of this offer. Russo decided not to go to work by this means because he did not want to "sneak back and forth" to work. Svida called Russo and asked for an explanation. Russo told him that he did not want to return to work if he had to travel with security guards each day, adding that he would see what happened with the strike.[19] What was said at the end of that conversation is in dispute. Svida stated that Russo told him on September 22 that he accepted a position elsewhere and that he would not be returning to work. In support of this position, Respondent offers a letter dated October 2 which it sent to Russo confirming their conversation of September 22, in which Russo allegedly said that he "accepted employment elsewhere and will not be returning to [Respondent]." (Resp. Exh. 11.) Russo admitted receiving that letter. However, he testified that he said *if* he could find employment elsewhere he would not return to Respondent. Russo added that he never terminated his employment with Respondent, and did not respond to its letter of October 2 because he returned to the picket line and was seen by Svida. Russo added that he did not obtain other employment until December 1.

Thus, the General Counsel alleges that Respondent discharged Russo on September 22. Respondent denies discharging Russo and contends that Russo voluntarily quit, having found other employment.

I do not credit Svida's testimony that Russo told him that he had obtained employment elsewhere. The evidence establishes that Russo did not obtain such employment until December 1. Russo would have no reason to tell Svida that he had obtained work elsewhere if he, in fact, had not secured such work. His reasons for not accepting the offer to ride in the van on or about September 21 was his refusal to sneak into work and his refusal to return to work if it meant being accompanied by guards. The reason given to the guards on about September 21 or 22 by Russo's grandmother, although a false reason, was that Russo was sick. Thus, it was nowhere stated by Russo that he had accepted employment elsewhere. Even assuming that Russo did say on September 22 that he had obtained work elsewhere, Respondent was not thereby relieved of its obligation to make a valid offer of reinstatement to Russo upon the later unconditional offer to return to work made on November 10.[20] Russo's failure to take issue with Respondent's self-serving letter of October 2 is proper in view of the fact that, as Russo and Svida testified, Russo resumed picketing

[17] There is no evidence of any injunction. Rather, on October 10, the Union filed a petition in Case 29-RC-5179, and Respondent filed a charge in Case 29-CP-433 which was dismissed by the Regional Director on October 24. The dismissal was sustained by the General Counsel on November 26. An expedited election was ordered which was blocked by the filing of the instant charges.

[18] *Matlock Truck Body & Trailer Corp.*, 248 NLRB 461, 464 (1980); *Colonial Haven Nursing Home, Inc.*, 218 NLRB 1007, 1011 (1975). Gross testified that on September 11, although Svida told the employees they could return to work, they refused to return until a union representative advised them to return. Other employees also testified that the Union was their representative.

[19] The above is based on the testimony of Svida, which I credit as to these facts, and the testimony of Russo.

[20] *Standard Materials, Inc.*, 237 NLRB 1136, 1146 (1978).

after September 22, and Russo was seen by Svida on the picket line.[21] Russo was thus obviously available to work. Thus, Russo retained his status as an employee—a striking employee. He did not quit and he was not discharged. His interests remained aligned with the other strikers at the time that he refused to return to work by security guard van and at the time he resumed picketing. He was still striking and had not yet made an unconditional offer to return to work. As a striking employee, he was entitled to a valid offer of reinstatement upon his unconditional offer to return to work. Respondent's failure to reinstate him upon his unconditional offer to return violated Section 8(a)(3) of the Act.

There is no evidence to support a finding that Russo was discharged, as alleged by the General Counsel. Respondent's letter of October 2 is a self-serving statement, which states the erroneous belief that Russo quit. It is not a letter of discharge or notification to him that he was discharged. Accordingly, I shall recommend that the complaint allegation of Russo's discharge be dismissed. I shall further recommend that he be accorded the rights of an unfair labor practice striker, which will be discussed, *infra.*

b. *William Gross*

The evidence discussed above is clear that Gross was discharged because of his union activities. He signed a card for the Union in June and also on September 9. Respondent obtained knowledge of the advent of the Union certainly on September 10 when union officials visited the premises and demanded recognition from Respondent's supervisor, Svida.[22] Thus, 1 day later, on September 11, Supervisor Richardson criticized the amount of work he had done, and, after a confrontation in which Gross protested the accusation that he had not worked hard enough, Richardson called Gross a liar, to which Gross replied that Richardson could "kiss his ass." Richardson punched Gross' timecard. Gross' testimony that Richardson told him at that time he was "not going to get the Union and it's not going to work" and that he "should not have brought the Union in in the first place" are all uncontradicted. Richardson did not testify.

Respondent denies that Gross was discharged. Although Gross conceded that Supervisor Svida later told him that he had not been discharged and could return to work, this conversation occurred after an angry confrontation between Gross and Richardson regarding Gross' work performance during which, it is uncontradicted, Richardson told Gross that he was fired, and also punched his card. It is thus obvious that Gross was in fact discharged. The test for determining whether an employer's statements constitute a discharge depends on whether they would "reasonably lead the employees to believe that they had been discharged."[23] The actions of Gross in leaving the shop after he had been told that he was discharged and after his card was punched and in telling his fellow employees that he had been discharged, which then caused employees to strike in protest of the discharge, all clearly demonstrate that Gross reasonably believed that he had been discharged.

The unlawful nature of Gross' discharge is thus clearly established in his sudden discharge without warning 1 day after the Union's demand for recognition. Moreover, Richardson's statements to Gross at the time of the discharge that he should not have brought the Union in clearly show that Richardson believed that Gross was responsible for the Union's advent. His warning to Gross that he was not going to get the Union vividly demonstrates and establishes Respondent's union animus and its motivation in discharging Gross. Respondent has not come forward with any evidence as to this issue. Indeed, it asserts that Gross was not discharged, an argument which I reject.

From the foregoing, I conclude therefore that the General Counsel has made a *prima facie* showing that Gross' union activity was a motivating factor in Respondent's decision to discharge him.[24]

Inasmuch as Respondent asserts that Gross was not discharged, it has come forward with no evidence to justify the discharge. In fact, its counsel stated at the hearing that it was making no claim that Gross was discharged for poor work or misconduct. Consequently, Respondent has not met its burden of showing that it would have taken the same action against Gross in the absence of his union activities.[25] Accordingly, I find that Respondent discharged Gross in violation of Section 8(a)(1) and (3) of the Act.

10. Conclusions as to the 8(a)(1) and (3) allegations

a. *Creation of the impression of surveillance and threat of discharge*

Employee Ravenell gave uncontradicted testimony that, in or about late August 1980, Supervisor Richardson told him: "Hey man, you're trying to get a Union in here." The Board has recently held that similar statements violate Section 8(a)(1) of the Act because they imply surveillance of the employees' union activities, and have a reasonable tendency to discourage the employees in exercising their statutory rights by creating the impression that Respondent has sources of information about their union activity.

I therefore find that Richardson's statement violated Section 8(a)(1) of the Act.[26] I find that this statement constitutes the creation of the impression of surveillance and not interrogation, as alleged in the complaint.

In that same conversation, Richardson told Ravenell: "You know what happened when you all tried to get a union in here before, what happened to them guys." Ravenell also testified that, about 2 months prior to that

[21] Svida's testimony is somewhat unclear, but he did state that Russo was "on and off the picket line during a period of 7 weeks," which would include the period after September 22.

[22] Respondent's answer admits that the Union demanded recognition. Svida did not contradict the Union's assertion that the demand occurred on September 10.

[23] *Ridgeway Trucking Company*, 243 NLRB 1048, 1049 (1979).

[24] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

[25] *Ibid.*

[26] *Overnite Transportation Company*, 254 NLRB 132 (1981) ("I hear you are involved with the Union"); *Plasticoid Company*, 168 NLRB 135, fn. 3 (1967).

conversation, employees Frank Friday and Joe were discharged, shortly after which Supervisor Richardson told him: "You see what happens with Union guys, they try and start trouble with the Union now."

Although no evidence was presented as to the discharges of Friday and Joe, and there was no evidence, documentary or otherwise, that Friday or Joe were actually employed by Respondent or discharged by it, I am constrained to credit Ravenell's testimony regarding his August conversation with Richardson concerning the consequences of employee interest in the Union. As noted above, Ravenell's testimony is uncontradicted, and Ravenell testified about similar conversations and statements made by Richardson 2 months earlier. Moreover, Richardson's later conduct, especially with regard to statements made by him during Gross' discharge, clearly establishes his union animus and his proclivity to make statements in violation of employee rights. Richardson's statement, which implied that Friday and Joe were fired for union activity, violated Section 8(a)(1) of the Act as it conveyed to Ravenell not only that they may have been discharged unlawfully but also that other employees would suffer a similar fate if they engaged in such activity.[27]

b. *Surveillance*

The General Counsel alleges that Richardson's conduct on September 9 in following employees' cars when they drove to the union office constituted unlawful surveillance and the impression of surveillance. The evidence reveals only that, when employees left work in a group, Richardson asked them what they were "up to," and that the employees traveled in two cars with Richardson following them for one-quarter mile, at which time he ceased following them and the employees then traveled another 40 minutes to the union office. Although there was testimony that Richardson's route following the cars was opposite to that which he usually took to go home, there was no evidence that he followed them any further than one-quarter mile. There was similarly no evidence that he knew that the employees were traveling to a union meeting.[28] Richardson's conduct in following employees' cars one-quarter mile after which they traveled another 40 minutes to the union office does not rise to a level which would sustain the General Counsel's burden of proving surveillance of employees' union activities or the creation of the impression of surveillance as alleged in the complaint.[29]

c. *Closer supervision, more onerous work assignment, and threat of discharge*

The General Counsel alleges that, since on or about September 1, Respondent subjected the employees to closer supervision and more onerous conditions of work than they previously had received.

Employee Willie Ravenell gave uncontradicted testimony that, on September 11, he was working as a stockman when Richardson ordered him to pull orders as well as do stockman's work, saying: "The union can't help now because you ain't in the union. I'll fire you right now and send you home." Richardson's statement clearly violates Section 8(a)(1) of the Act inasmuch as it is a threat to discharge Ravenell. However, there is no evidence as to whether Ravenell thereafter performed work involving pulling orders or whether such work, if performed, was less desirable or more onerous than the stockman's duties. Respondent did not adduce any evidence on this issue. Nevertheless, the command to pull orders constituted a change in Ravenell's current work as a stockman.[30] Richardson made this change 1 day after the Union's demand for recognition. The change, accordingly, was in retaliation for the employees' support of the Union and was applied to a person who was the target of previous unlawful statements by Richardson. Respondent came forward with no business justification for the change. I therefore find that the threat to discharge violated Section 8(a)(1) of the Act. Inasmuch as there was no evidence as to whether the work of pulling orders was less desirable or more onerous, as alleged in the complaint, I will recommend dismissal of that allegation of the complaint.

On September 15, Ravenell was again made the target of another threat of discharge and change in working conditions by Richardson. Upon arriving at work 15 minutes early he was told that he must start work immediately. Ravenell refused because he would not be paid for the extra 15 minutes. Richardson told him that he could return home if he wanted to. Respondent adduced no evidence on this issue. Apparently Ravenell remained at work[31] and did not go home, but there was no evidence as to whether Ravenell began work 15 minutes early as ordered by Richardson. Nevertheless this was a change in Ravenell's conditions of employment inasmuch as previously, although he arrived at work 15 minutes early, he was not required to begin work until his regular starting time. Ravenell stated that he had never before been aware of such a rule requiring an employee to begin work upon punching in. Respondent adduced no evidence as to this issue. Richardson's statement to Ravenell, that if he did not like the new rule he could return home "if he wanted to," is clearly a threat to discharge him if he did not submit to the change in rule. I find for the same reasons set forth above that the threat to discharge violated Section 8(a)(1) of the Act.[32]

Ravenell also testified without contradiction that employees had always received a 10-minute coffeebreak. On September 15, Richardson told him that he could only take a 5-minute break. Again, this was a new change in

[27] *United Plastics, Inc.*, 255 NLRB 178 (1981); *Burns International Security Services, Inc.*, 234 NLRB 373 (1978).

[28] Richardson's question to the employees asking what they were "up to" supports a finding that he did not know where they were going.

[29] *Elk Brand Manufacturing Company*, 253 NLRB 1038 (1981), where an allegation of surveillance was dismissed when an employer official drove his car in front of a building where a union meeting was being held.

[30] *Together We Stand Women's Guild Day Care Center*, 256 NLRB 393 (1981).

[31] He was present later at the first coffeebreak and when the strike began.

[32] There was no evidence as to whether the rule was in effect thereafter.

work rules. Respondent adduced no evidence as to this issue. It is also clear that this change, coming on the heels of the Union's demand for recognition, was designed to harass the employees for their support of the Union. Richardson's antiunion animus is clear, not only in his previous statements to Ravenell and other employees, including Gross, but his later statements to Ravenell.

On the same date, September 15, Richardson also threatened to discharge employee Lamar Johnson if he did not work faster, and also told employee Horace Ross that he spent too much time in the bathroom and instructed that he must advise Richardson each time he intends to use the bathroom, and, if he does not do so, he could punch his card and go home. Richardson had never been heard to complain about these matters in the past. Respondent adduced no evidence on these issues.

As set forth above, these threats and announced change in rule requiring notification of the supervisor whenever an employee intended to use the bathroom were designed to harass employees because of their interest in and support for the Union. All of these incidents occurred only a few days after the Union's demand for recognition, and the unlawful discharge of employee Gross. In addition, they occurred in the context of an antiunion diatribe over the course of several days by Richardson. Accordingly, I find that the threats of discharge violated Section 8(a)(1) of the Act.

From the foregoing, I conclude therefore that the General Counsel has made a *prima facie* showing that the union activities of the employees was a motivating factor in Respondent's unlawful changes in work rules announced on September 11 and 15.[33]

I find, further, that Respondent has utterly failed to meet its burden of showing that it would have made these changes in the absence of the union activities of its employees. I note in this regard that Richardson did not testify and Respondent adduced no evidence on these issues. Accordingly, I find that Respondent violated Section 8(a)(1) and (3) of the Act by making new changes in the work rules for its employees on September 11 and 15, by ordering Ravenell to pull orders and begin work 15 minutes early, by reducing the coffeebreak to 5 minutes, and by requiring that Ross notify his supervisor when he intended to use the bathroom.

d. *Threats of bodily injury*

Employees Gross and Johnson testified that, on September 12, Richardson walked around the shop holding a crowbar. Gross said that Richardson threatened to "hurt someone" and Johnson stated that Richardson said that he would kill Gross.[34] Gross also stated that he kept out of Richardson's way that day. Richardson did not testify. I find that this threat to kill Gross, made 1 day after his unlawful discharge by Richardson, violated Section 8(a)(1) of the Act.[35]

e. *Promises of wage increases, promotions, and transfers*

(1) Statements of Richardson

Ravenell testified that, after work on September 12, Richardson warned him that he should not be with the Union because he (Richardson) intended to promote him to assistant foreman, adding, "You can't vote for the union . . . you'd be a company man." Ravenell testified that, about a month earlier, Richardson also promised him an assistant foreman's job with a wage increase of 25 cents.

It is clear that the September 12 offer of an assistant foreman's position constituted an unlawful promise inasmuch as it was directly related to and conditioned upon Ravenell's abandoning his support for and interest in the Union. That promise, therefore, violates Section 8(a)(1) of the Act.[36]

However, I do not find the earlier[37] offer of an assistant foreman's position and a 25-cent raise to Ravenell to be violative of the Act. That offer would have occurred sometime in August. There was no evidence as to the circumstances surrounding the making of that offer nor whether any relationship was expressed by Richardson between the offer and the Union or Ravenell's interest in the Union. It is impossible to ascertain the precise date of the alleged offer, which makes any connection with other statements made by Richardson impossible. Moreover, Ravenell did not take the offer seriously and indeed testified that he knew that it was a lie because of the hire of Bob. Under these circumstances, I do not find that Respondent's offer in August of an assistant foreman's position and a 25-cent raise to be in violation of the Act.

(2) Statements of Greg Svida

Ravenell testified that shortly before the September 15 strike he was called into Supervisor Svida's office and was told by him: "You got [a] whole lot to lose messing around with the Union cause you've got a lot of time in, your seniority, your profit sharing, plus your hospitalization." Ravenell replied that he did not care what he had to lose because of the harassment of Richardson.

Svida denied speaking to anyone about the Union on September 15. I credit Ravenell's testimony. He impressed me as being a believable witness and he is still employed by Respondent. Moreover, he testified without contradiction that the following day he went into Respondent's premises to request his vacation pay and profit-sharing money. This leads me to believe that Svida's threats that he had a "lot to lose," including his profit-sharing money, caused him to request and attempt to obtain that money immediately. Accordingly, it is quite clear that Svida made the statements attributed to him by Ravenell on September 15. Such threats of loss of economic benefits are violations of Section 8(a)(1) of the Act.[38]

[33] *Wright Line, a Division of Wright Line, Inc., supra.*

[34] It is probably that Richardson resented the fact that his discharge of Gross 1 day before was not only ineffective but caused a strike which resulted in the reinstatement of Gross.

[35] *Jax Mold & Machine, Inc.*, 255 NLRB 942 (1981); *McLane Western, Inc.*, 251 NLRB 1396, 1403 (1980).

[36] *P. A. Incorporated*, 248 NLRB 491, 498 (1980); *Montgomery Ward & Co., Incorporated*, 227 NLRB 1170, 1174 (1977).

[37] About a month earlier, according to Ravenell.

[38] *B-P Custom Building Products, Inc.*, 251 NLRB 1337, 1351 (1980).

(3) Statements of Alvin Zee

Ravenell gave uncontradicted testimony[39] that on September 16 he went into Respondent's premises to ask for his vacation pay and profit-sharing money. Respondent Vice President Alvin Zee told him that the "union idea is going to get you in a lot of trouble because they don't mean you no good." This statement constituted a threat of reprisal against Ravenell and violates Section 8(a)(1) of the Act.[40]

Zee's statement in the same conversation that he wanted Ravenell to set up a warehouse in Florida and "leave the Union" also violated the Act in that it constituted an unlawful promise of a transfer if Ravenell would withdraw his support for the Union.

11. The nature of the strike on September 15

The complaint alleges that, on September 15, the employees went on a strike which was caused, provoked, and prolonged by Respondent's unfair labor practices. The complaint further alleges that, on November 10, the striking employees made unconditional offers to return to work, and thereafter Respondent refused to reinstate them. The General Counsel contends that as the employees were unfair labor practice strikers they cannot be replaced. Respondent, on the other hand, argues that the strike was economic in nature and that offers of reinstatement were made to the strikers after permanent replacements quit or were terminated based upon their seniority. Respondent argues that the only reason for the strike was economic, specifically, for recognition and that, if there was any harassment of employees, such harassment preceded the advent of the Union. I do not agree with these contentions.

The Board has held[41] that:

> The principle is well established that employees may be entitled to the special reinstatement rights provided unfair labor practice strikers even though the strike activity may have been motivated by concerns which went beyond their employer's commission of unfair labor practices, so long as it can be determined from the record as a whole that the unfair labor practices contributed in part to the employees' decision to strike.

It is clear that Respondent's unfair labor practices contributed to the employees' desire to take the concerted action of engaging in a strike. Thus, the following litany of events occurred shortly before the strike: the summary unlawful discharge of Gross on September 11; the unlawful threat to kill Gross and a promise of promotion and wage increase to Ravenell on September 12; the unlawful changes of working conditions of Ravenell and Horace Ross and threats to discharge Ravenell, Johnson, and Ross on September 15, all made by Richardson; and the threat of loss of benefits made to Ravenell by Svida on September 15.

Moreover, the reasons for the strike were related by the employees. Thus, when Ravenell was told on September 15 by Svida that he had a lot to lose by "messing around with the Union," he replied that he did not care what he had to lose, but that he was striking because of the harassment of Richardson. Ravenell further stated: "I just got tired of Richards[42] harassing us on the job. Pushes people to do this and threatening guys." Ravenell further testified[43] that he was told by employee Johnson, who was the Union's contact at the plant, that the Union said that: "If they didn't recognize the Union about all this harassment that we was getting . . . that it would be best for us to go on strike to get something did for all the harassment that we were getting."

The strike occurred immediately after the union representatives were denied recognition when they visited the shop on September 15. Union Representative Martinez explained to the employees that the case would be brought to the Board where it would take 6 to 10 weeks to resolve. The employees replied: "We ain't going to take that B.S. no more, we're just going to walk out." Martinez and Union Representative Zaretsky stated that the employees explained that they were being harassed by Richardson. Employee Gross testified that the decision to strike was based in part on Richardson's harassment.

Thus, a causal relationship existed between Richardson's harassment and the conduct of Svida, which I have found to constitute unfair labor practices, and the ensuing strike.[44] It is clear that the employees, fresh from a brief strike to protest the unlawful discharge of Gross which was successful in securing his immediate reinstatement, sought to repeat their tactic 4 days later to protest such unfair labor practices and stop the harassment which continued up to the very moment the strike began. Such harassment was motivated by the advent of the Union.

I, therefore, find that the strike which commenced on September 15 was an unfair labor practice strike in protest of the harassment of employees.[45]

12. The alleged refusal to reinstate strikers in violation of Section 8(a)(3)

a. *General conclusions*

Having found that the strike was an unfair labor practice strike, it is clear that the strikers are entitled to reinstatement upon application unless they committed strike misconduct. Respondent's failure and refusal to reinstate such strikers upon their November 10 application, discharging if necessary any strike replacements, are clearly violative of Section 8(a)(1) and (3) of the Act. I so find.[46]

The complaint alleges that Respondent has discriminated against seven strikers,[47] as to whom unconditional

[39] Zee did not testify.

[40] *Cone Mills Corporation, Revolution Division*, 245 NLRB 159, 166 (1979); *John H. Creps, E. Garson Creps and James J. Creps a partnership, d/b/a Creps United Publications*, 228 NLRB 706, 712 (1977).

[41] *Colonial Haven Nursing Home, Inc.*, 218 NLRB 1007, 1009 (1975).

[42] Should be Richardson.

[43] In answer to a question by Respondent's counsel.

[44] *Tufts Brothers Incorporated*, 235 NLRB 808, 823 (1978).

[45] *Research Products/Blankenship Company*, 258 NLRB 19 (1981).

[46] *Mastro Plastics Corporation* v. *N.L.R.B.*, 350 U.S. 270, 278 (1956).

[47] Lawrence Creighton, Curtis Exum, William Gross, Lamar Johnson, Julius King, William Ravenell, and Horace Ross.

offers to return were made, by failing and refusing to reinstate them. Respondent contends that one of them, Julius King, was not reinstated because he engaged in willful strike misconduct, which rendered him unsuitable for reemployment. It further states that it offered to reinstate five employees,[48] and also reinstated Exum.

On September 16, one day after the strike began, Respondent sent a letter to certain employees which stated, *inter alia*, that "it is our sincere hope that all employees will return to work and reestablish normal operations. The decision to return to work is up to you and you will not be discharged or disciplined for not returning to work. However . . . the Company reserves its option to exercise its legal right to permanently replace you in order to continue business. I hope you will return to work."

On September 18, Respondent sent another letter to certain employees,[49] which stated, *inter alia*, "In our first letter to you we told you that we very much wanted all employees to return to work. We still look forward to your return because a strike is a devestating [sic] experience for everyone involved. . . . We urge you to return to work by noon on Monday, September 22. We will begin the process of hiring new employees to permanently fill your job. This will leave you with only the right of being replaced on a preferential hiring list. Please remember you will be replaced and not discharged."

As heretofore found, by telegram of November 10, the Union notified Respondent of its decision to terminate the strike, and unconditionally requested reinstatement for all striking employees.

It is clear that Respondent's letters of September 16 and 18 do not constitute valid offers of reinstatement to the employees.[50] Respondent does not argue that they are.[51] Even assuming that the letters were communicated to the employees, it can hardly be argued that they were made in good faith. Thus, Ravenell testified that, on September 16, the date the first letter was sent, he was told by Vice President Zee that the "union idea is going to get you in a lot of trouble." It is most significant that Zee also told Ravenell then that he would be placed on a preferential hiring list. Thus, Respondent had no intention of having the strikers return to work upon its purported letters of September 16 and 18, but, rather, as it argued at the hearing and in its brief, planned to offer reinstatement and sent letters of reinstatement after strike replacements had been terminated or quit, in the order of seniority.[52]

The notification to unfair labor practice strikers that they would be permanently replaced violates Section 8(a)(1) of the Act inasmuch as it constitutes an illegal threat of permanent replacement.[53]

b. *The striking employees; Julius King*

King testified that he was picketing for about a month when a guard who was employed by Respondent approached him with a guard dog. King told the guard to keep the dog away from him, but he did not do so. King threw a bottle at the dog striking Respondent's truck, breaking a window. The guard and dog then ran at King. King took a meat cleaver from a car parked nearby and brandished it at the guard. The guard withdrew and the police were called, who arrested King for property damage. Other charges were also filed against King.[54]

As the Board stated in *Coronet Casuals, Inc.*:[55]

> Sections 7 and 13 of the Act grant employees the right to strike, picket, and engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. It is true, of course, that not all forms of conduct literally within the terms of Sections 7 and 13 remain entitled to statutory protection. In deference to the rights of employers and the public, the Board and the courts have acknowledged that serious acts of misconduct which occur in the course of a strike may disqualify a striker from the protection of the Act.

I have carefully balanced the nature of King's conduct against Respondent's unfair labor practices,[56] especially including Supervisor Richardson's threats of violence against Gross and his brandishing of a pipe or crowbar. Nevertheless, I find that King's misconduct was so violent and of such serious character as to render him unfit for future service with Respondent. Thus, the guard dog being held by the guard was restrained and was not menacing King except by growling at him. King's throwing the bottle at the guard and dog was thus unprovoked and was clearly intended to begin a confrontation with the guard and dog. His breaking of the truck's window and menacing of the guard with the meat cleaver are

[48] Creighton, Gross, Johnson, Ravenell, and Horace Ross.

[49] It is unclear as to whom the letters were sent to. Ravenell did not receive the September 16 or 18 letter but certain unnamed employees told him that they received certain letters. Ravenell does not know which letters those employees received. Johnson received the September 16 letter but not the letter of September 18. Gross, King, and Russo were not asked about these letters. Svida testified that he sent the September 16 letter to Russo, but he gave no other testimony as to whom he sent the letter to.

[50] However, I note that two striking employees, W. Ross and L. Stewart, returned to work on September 19. It is unknown whether they returned as a result of the September 16 or 18 letters, or even whether those letters were sent to them.

[51] At the hearing and in its brief, Respondent took the position that the employees were economic strikers and could be permanently replaced. Indeed, Svida testified that offers of reinstatement were made after a permanent replacement had been terminated or quit. The evidence so indicates. It is significant to note that a permanent replacement, Adkin Enix, was hired on September 19, 3 days earlier than the time permitted by Respondent in its September 18 letter for strikers to return to their jobs. (G.C. Exh. 20.)

[52] Respondent referred to such later letters as offers of reinstatement. It never referred to the September 16 or 18 letters as offers of reinstatement. It is further noted that such letters have no legal significance because they were made at a time when Respondent had no obligation to act. Thus, no unconditional offer to return had as yet been made on behalf of the strikers.

[53] *Inta-Roto, Incorporated*, 252 NLRB 764 (1980).

[54] Presumably his conduct involving the meat cleaver. The charges were dismissed in return for King's resignation from Respondent and his agreement to waive reinstatement (Resp. Exh. 13). I do not rely upon this agreement in reaching my conclusions concerning King's strike misconduct or his right to reinstatement based upon such misconduct.

[55] 207 NLRB 304 (1973).

[56] *Juniata Packing Company*, 182 NLRB 934, 935 (1970); *H. N. Thayer Company*, 115 NLRB 1591, 1593, 1606 (1956).

both serious acts of misconduct.[57] I do not credit King's statement that he was attempting to defend himself when he wielded the meat cleaver. There was no showing that the dog or the guard was attacking him when he went to the car and obtained the knife, or even when he threw the bottle.

As discussed above, the strike was provoked by the harassment of Richardson and Respondent's unfair labor practices. However, even taking into account the threats of violence against Gross by Respondent, it is difficult to believe that that conduct, as to which King did not testify, was sufficient to provoke him to resort to property damage and the assault upon the security guard. King's brandishing of the meat cleaver was openly performed on the picket line. Word that strikers were armed with such weapons could have a strong coercive effect upon nonstrikers.[58] Respondent, therefore, did not violate the Act by refusing to reinstate King.

c. *The status of the other strikers*

(1) Lawrence Creighton

Creighton did not testify. He went out on strike on September 15. A permanent replacement, Elton Deloatch, was hired for him on September 26, and continued in Respondent's employ until about August 19, 1981, when his name no longer appeared on its payroll. Svida testified that he offered reinstatement to Creighton after his replacement was terminated or had quit based on seniority. According to Svida, Creighton was offered reinstatement on or about August 19, 1981.[59]

(2) Curtis Exum

Exum did not testify. He went out on strike on September 15. Svida testified that Exum returned to work and was reinstated on December 15,[60] after the discharge of W. Ross, a striker who was not alleged in the complaint as being improperly denied reinstatement.

(3) William Gross

Gross went out on strike on September 15. A permanent replacement, Joseph Scarrello, was hired on October 6, 1980.

Gross testified that, after the strike ended, he began work at another company on January 26, 1981, and was still employed there at the date of the hearing. On February 5, 1981, Respondent sent him a letter asking him if he was "interested in returning to work."[61] Gross did not respond. On June 26, 1981, Respondent sent another letter to Gross advising him that "there is a job opportunity and opening available for you" on July 6, 1981, or sooner. It further advised Gross to notify Respondent within 10 days whether he would be "available for work." Gross contacted Respondent and said that he would "get back to" it regarding its offer, but never called back.

(4) Lamar Johnson

Johnson went out on strike on September 15. A permanent replacement, Ethaniel Moore, was hired for him on October 1, and continued in Respondent's employ until about November 19, which was the last time he appeared on its payroll. Svida testified that he offered reinstatement to Johnson, after his replacement quit or was terminated based on seniority. Therefore, according to Svida, Johnson was offered reinstatement on or about November 19.[62]

(5) Willie Ravenell

Ravenell went out on strike on September 15. A permanent replacement, Horace Miles, was hired for him on October 8. Ravenell was reinstated on July 13, 1981.[63]

(6) Horace Ross

Ross did not testify. He went out on strike on September 15. A permanent replacement, Peter Weber, was hired for him on October 6, and continued in Respondent's employ until about August 12, 1981, when his name no longer appeared on its payroll. Svida testified that he offered reinstatement to Ross after his replacement had quit or was terminated based on seniority. Therefore, according to Svida, Ross was offered reinstatement on or about August 12, 1981.[64]

(7) Joseph Russo

Russo went out on strike on September 15. As discussed above, Respondent was under the mistaken belief that Russo quit as of September 27. Rather, as found and concluded above, Russo did not quit and remained an unfair labor practice striker. Accordingly, inasmuch as Respondent has not offered to reinstate him upon the unconditional offer to return made by the Union, it has violated Section 8(a)(1) and (3) of the Act.

d. *Conclusions as to the status of these strikers*

An unconditional offer to return to work was made by the Union on November 10 in behalf of strikers Creighton, Exum, Gross, Johnson, Ravenell, Horace, Ross, and Russo. Inasmuch as I have already found and concluded that the strike which commenced on September 15 was an unfair labor practice strike, it is well established that, upon an unconditional offer to return to work, unfair labor practice strikers are entitled to immediate reinstatement to their former jobs or, if such jobs

[57] *North Cambria Fuel Company, Inc.*, 247 NLRB 1408 (1980), enfd. 645 F.2d 177, 182 (3d Cir. 1981); *Bromine Division, Drug Research, Inc.*, 233 NLRB 253, 259 (1977); cf. *Overhead Door Corp., Advance Industries Division* v. *N.L.R.B.*, 540 F.2d 878, 882 (7th Cir. 1976).

[58] *Overhead Door Corp., Advance Industries Division* v. *N.L.R.B., supra.*

[59] No letter offering reinstatement to Creighton was offered, and there is no evidence as to when such a letter was sent to him.

[60] Payroll records support that claim.

[61] Even this did not constitute a valid offer of reinstatement. *Montgomery County MH/MR Emergency Service*, 239 NLRB 821, 826-827 (1978).

[62] No letter offering reinstatement to Johnson was offered, and there is no evidence as to when such a letter was sent to him.

[63] Miles' name last appears on Respondent's payroll on April 1, 1981. There was no explanation as to why Ravenell, who has long tenure and great seniority, was not reinstated upon Miles' apparent departure from work in April 1981.

[64] No letter offering reinstatement to Ross was offered, and there is no evidence as to when such a letter was sent to him.

no longer exist, to substantially equivalent positions.[65] Further, the burden is upon the employer to offer immediate and unconditional reinstatement, even if striker replacements must be terminated to make room for the returning strikers.[66]

In the instant case, at the time the striking employees unconditionally requested reinstatement, Respondent was of the view that the strike had been an economic strike and that the returning strikers were economic strikers.[67] Accordingly, Respondent informed certain strikers that it would put them on preferential hiring lists. Respondent did not terminate any of the employees that had been hired to replace the strikers in order to make room for the returning strikers. Respondent, however, had an obligation to offer immediate and full reinstatement to its returning unfair labor practice strikers and its failure to terminate strike replacements in order to make room for those strikers violated Section 8(a)(3) of the Act.[68]

13. Respondent's refusal to recognize and bargain with the Union

The General Counsel alleges and the Respondent admits that the appropriate bargaining unit consists of:

> All warehouse employees and drivers, employed by Respondent at the Woodside, New York warehouse, exclusive of all other employees, guards and all supervisors as defined in Section 2(11) of the Act.

The parties stipulated that on September 10, the date of the demand for recognition, Respondent employed 12 persons in the appropriate bargaining unit.[69]

The General Counsel alleges that, on September 9, a majority of the employees of Respondent, in the appropriate unit previously described, designated and selected the Union as its representative for the purposes of collective bargaining. The record establishes that, on that date, eight employees signed cards for the Union.[70] The cards were properly authenticated either by the signer or by the solicitor.[71] It is, therefore, clear that the Union did, as alleged, represent a majority of Respondent's employees for the purposes of collective bargaining, in the above-described appropriate unit and I so find.

On September 10 the Union demanded recognition and was refused.

Respondent undertook immediately a campaign consisting of the above-described conduct violative of Section 8(a)(1) and (3) of the Act. The Board has held that where an employer refuses to recognize and bargain with a union as the duly designated majority representative of its employees while simultaneously engaging in unfair labor practices which undermine the union's majority status, the employer is in violation of Section 8(a)(1) and (5) of the Act. Since the record reflects that this is what occurred in the instant case, I find that Respondent has, as alleged, violated Section 8(a)(1) and (5) of the Act.

The Supreme Court in *N.L.R.B.* v. *Gissel Packing Co. Inc.*,[72] approved the finding of an 8(a)(5) violation and the issuance of a bargaining order, where the unfair labor practices committed by Respondent, have a "tendency to undermine majority strength and impede the election process." 395 U.S. at 613–614.

There can be little doubt, and I so find, that the unfair labor practices found to have been committed by Respondent, the discharge of Gross,[73] as well as the other unfair labor practices found, are sufficient to have such a tendency to impede the election process.

Respondent alleges as an affirmative defense that the Union and strikers "engaged in violence and misconduct, and thereby waived all rights and remedies under the Act." Apparently, Respondent argues that, in view of the violence committed by King, any bargaining order, even if warranted, be withheld from the Union.[74] The only incident of picket line misconduct or violence alleged or proven is that committed by employee King, consisting of breaking a window of a truck and also brandishing a meat cleaver at a security guard for which he was arrested. There was no involvement by union officials in any misconduct or violence. The conduct of one picket in a nearly 2-month strike is insufficient to justify the extraordinary action of withholding the appropriate bargaining order required to remedy Respondent's unfair labor practices.[75]

Therefore, I recommend that Respondent be ordered to bargain with the Union as of September 10.[76]

CONCLUSIONS OF LAW

1. The Respondent, Heads and Threads Company, a Division of MSL Industries, Inc., is, and at all times ma-

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[65] *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938).

[66] *Laredo Coca Cola Bottling Company*, 241 NLRB 167 (1979).

[67] At the time of the strike, at the hearing, and in its brief to me, Respondent has argued that the strike was an economic one and that it was under no obligation to offer immediate reinstatement to its employees who had unconditionally offered to return to work.

[68] *Atlas Metal Parts Co., Inc.*, 252 NLRB 205 (1980); *Coca-Cola Bottling Company of Miami, Inc.*, 237 NLRB 936 (1978). See also *N.L.R.B.* v. *Top Manufacturing Company, Inc.*, 594 F.2d 223 (9th Cir. 1979). Respondent unlawfully delayed offering reinstatement to: (1) Creighton and Horace Ross until August 1981, (2) Gross until July 1981, (3) Johnson until November 1980, and unlawfully delayed reinstating Exum until December 1980 and Ravenell until July 1981. In addition, Respondent unlawfully failed and refused to reinstate Russo. *Gulf-Wandes Corporation*, 233 NLRB 772, 779 (1977).

[69] Creighton, Curran, Exum, Ferrell, Gross, Johnson, King, Ravenell, Horace Ross, W. Ross, Russo, and Stewart.

[70] Creighton, Curran, Exum, Gross, Johnson, King, H. Ross, and Ravenell.

[71] Union Representative Martinez testified that he told the eight employees that a purpose of the cards was for representation and recognition. He saw them all sign cards at that time. Ravenell, who cannot read, testified that the union representative explained the purpose of the card to him, and said that the Union would file for an election. Ravenell did not testify, however, that that was the *sole* purpose of the card. Gross testified that he saw all the employees sign cards and that he was told, *inter alia*, that the card's purpose was to prove he wanted the Union.

[72] 395 U.S. 575 (1964).

[73] The Board and the courts have long classified the unlawful discharge of employees as conduct going "to the very heart of the Act." *Faith Garment Company, Division of Dunhall Pharmaceutical, Inc.*, 246 NLRB 299 (1979); *N.L.R.B.* v. *Entwistle Manufacturing Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

[74] *Herbert Bernstein, Alan Bernstein, Laura Bernstein, a Copartnership d/b/a Laura Modes Company*, 144 NLRB 1592 (1963).

[75] *Highland Plastics, Inc.*, 256 NLRB 146 (1981); *Maywood Plant of Grede Plastics, A Division of Grede Foundries, Inc.*, 235 NLRB 363 (1978).

[76] The date that the Union obtained its majority status and when the unfair labor practices commenced.

terial herein has been, an employer engaged in commerce within the meaning of the Act.

2. Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All warehouse employees and drivers employed by Respondent at its Woodside, New York, warehouse, exclusive of all other employees, guards, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. At all times, since September 10, 1980, the Union has been the exclusive representative of the employees in said unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By discharging William Gross on September 11 for joining and assisting the Union and for engaging in protected concerted activity, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

6. By imposing changes in work assignments and work rules because of the union activities of its employees, by requiring Willie Ravenell to pull orders and begin work immediately upon punching in, and reducing the coffee breaktime, and requiring employees to notify their supervisor when they intended to use the bathroom, Respondent has violated Section 8(a)(1) and (3) of the Act.

7. By telling an employee that he is "trying to get a union in here," thereby creating the impression of surveillance of employees' union activities; telling an employee that the "union idea is going to get you in a lot of trouble;" threatening to discharge employees because of their union activities; threatening bodily injury against an employee because of his union activity; threatening an employee with loss of economic benefits if he did not abandon his membership in and activity in behalf of the Union; threatening unfair labor practice strikers with being permanently replaced; promising promotions and transfers to employees to induce them to refrain from becoming or remaining members of the Union and to induce them to abandon their membership in and activity on its behalf, Respondent has violated Section 8(a)(1) of the Act.

8. The strike which commenced on September 15, 1980, was an unfair labor practice strike.

9. On November 10, 1980, the Union made an unconditional offer on behalf of all strikers to return to work.

10. By failing and refusing to reinstate unfair labor practice strikers on about November 10, 1980, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

11. By refusing since on and after September 10, 1980, to recognize and bargain collectively with the Union as the exclusive representative of the employees in the unit described above, Respondent has violated Section 8(a)(1) and (5) of the Act.

12. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

13. Respondent has not violated the Act, as alleged in the complaint, by interrogating employees; engaging in surveillance of the concerted activities of employees; offering or promising wage increases to its employees; and subjecting its employees to closer supervision or more onerous conditions of work than they previously had received.

14. Respondent has not discharged Joseph Russo, as alleged in the complaint.

15. Respondent has not violated the Act, as alleged in the complaint, by failing and refusing to reinstate Julius King.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully refused on November 10 to reinstate the unfair labor practice strikers pursuant to the Union's unconditional offer on behalf of employees who participated in the strike to return to work, I shall recommend that Respondent offer full and immediate reinstatement to all such employees or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing if necessary any persons hired as replacements on or after September 15, 1980, without prejudice to their seniority or other rights and privileges.[77]

I shall also recommend that Respondent make all the unfair labor strikers, except Julius King, whole for any loss of wages and other benefits resulting from Respondent's failure to reinstate them from November 10, 1980, to the date of a proper offer of reinstatement. Their loss of earnings shall be computed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 561 (1977).

I shall also recommend that Respondent be ordered to recognize and bargain with the Union as the exclusive collective bargaining agent of the employees in the unit found appropriate herein.

Having found that Respondent has discriminatorily imposed changes in work assignments and work rules by requiring Willie Ravenell to pull orders, begin work immediately upon punching in, reducing the coffee breaktime, and requiring employees to notify their supervisor when they intended to use the bathroom, I shall recommend that Respondent be required to rescind these changes in work assignments and work rules.[78]

[77] This portion of the remedy shall not apply to Julius King, who was lawfully refused reinstatement for engaging in picket line misconduct. It shall also not apply to Curtis Exum or Willie Ravenell who have been reinstated. Although Svida testified that he offered reinstatement to certain other employees, I find that this issue was not fully litigated and I, therefore, leave to the compliance stage of this proceeding the resolution of that matter.

[78] Although the record is unclear as to whether these work assignments and work rules continued for any extended period of time, nevertheless, since no evidence was adduced by Respondent that the assignments and rules have changed or were rescinded, I shall assume that these new assignments and work rules are still in effect.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[79]

The Respondent, Heads and Threads Company, a Division of MSL Industries, Inc., Woodside, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging employees for engaging in protected concerted activity or otherwise discriminating against them in order to discourage them from joining or assisting Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union.

(b) Imposing changes in work assignments and work rules because of the union activities of the employees by requiring employees to pull orders, begin work immediately upon punching in, reducing the coffee breaktime, and requiring employees to notify their supervisors when they intended to use the bathroom.

(c) Telling employees that they are "trying to get a union in here," thereby creating the impression of surveillance of employees' union activities.

(d) Implying in statements to employees that other employees had been fired for engaging in union activities.

(e) Telling employees that the "union idea is going to get you in a lot of trouble."

(f) Threatening to discharge employees because of their union activities.

(g) Threatening bodily injury against employees because of their union activity.

(h) Threatening employees with loss of economic benefits if they did not abandon their membership in and activity in behalf of the Union.

(i) Threatening unfair labor practice strikers with being permanently replaced.

(j) Promising promotions and transfers to employees to induce them to refrain from becoming or remained members of the Union and to induce them to abandon their membership in and activity on its behalf.

(k) Refusing to recognize and bargain collectively with the Union concerning terms and conditions of employment of its employees, in the following appropriate bargaining unit:

> All warehouse employees and drivers, employed by Respondent at the Woodside, New York warehouse, exclusive of all other employees, guards and all supervisors as defined in Section 2(11) of the Act.

(l) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer to all unfair labor practice strikers, except Julius King and except those already reinstated, full and immediate reinstatement to their former positions or, in the event that their former positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any person hired by Respondent on or after September 15, 1980. Make whole all unfair labor practice strikers except Julius King for any loss of pay which they may have suffered by reason of Respondent's refusal to reinstate them, in conformity with the formula described in the section of this Decision entitled "The Remedy."

(b) Recognize and upon request, bargain collectively with Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of the employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed written agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Woodside, New York, copies of the attached notice marked "Appendix."[80] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations not specifically found herein.

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[79] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived.

[80] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."